

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 03-326-A
)	
MARK SHUMAKER,)	
)	
Defendant.)	

STATEMENT OF FACTS

Were the United States to proceed to trial in this case, it would provide testimonial and documentary evidence to prove beyond a reasonable doubt that from on or about May 15, 2001, through December 11, 2001, defendant Mark Shumaker, a.k.a. "Markalso" (hereinafter "the Defendant"), did willfully, and for the purpose of private financial gain, infringe the copyrights of copyrighted works, to wit, copyrighted music, software, computer games and movies, by the reproduction and distribution during a 180-day period of ten (10) or more copies of one or more of the copyrighted works which had a total retail value of \$2,500 or more, in violation of federal criminal copyright laws, 17 U.S.C. §506(a)(1) and 18 U.S.C. §2319(b)(1). Specifically, the testimonial and documentary evidence would establish, at a minimum, the following facts:

The Defendant's willful conduct included his participation in the so-called "warez scene,"¹ in particular his membership in the warez group Apocalypse Crew ("APC") and

¹"Warez" and "pirated software" are terms used to describe digital copies/reproductions of copyright-protected computer software, games, movies, and music that are distributed and traded over the Internet in violation of copyright law. The "warez scene" refers to the complex

his support of the warez group Drink Or Die. APC was a warez organization that specialized in the unauthorized distribution of copyrighted music over the Internet. Among other things, APC sought to acquire digital copies of songs and albums before their commercial release in the United States; these songs or albums would then be distributed by APC members, in MP3 format, to Internet sites worldwide. The supply of such pre-release music was most often provided by music industry insiders, such as radio DJs or employees of music magazine publishers, who frequently receive advance copies of songs prior to their commercial release.

Using the screen nickname “markalso,” the Defendant performed a number of important functions for APC and was among its core leadership. He operated the group’s closed, invite-only IRC channel where members discussed group business and other warez scene activities; he served as a “site op” for several FTP sites, where he and the other APC members had the administrative authority to add and remove authorized users of the site; and he acted as a “courier” for APC, uploading and downloading pirated music, games, software, and movies to and from private warez FTP sites² throughout the Internet.

One warez group that the Defendant became associated with because of his membership in APC was the warez “release” group known as Drink Or Die. Drink Or Die

web of both informal and formal Internet communication, distribution and trading channels used by individuals that engage in this form of software piracy.

²The term “FTP site” is often used by warez groups to refer to computers linked full-time to the Internet that serve as large storage databases for pirated software, games, movies, or music that may be copied and downloaded by authorized users of the site through File Transfer Protocol (FTP), a communication protocol for transferring files between computers connected to the Internet.

specialized in releasing "cracked" copies of application and utility software to the warez scene. Defendant uploaded hundreds of pirated music titles to one of Drink Or Die's private FTP sites known as Lake Of Fire. Lake Of Fire was exclusively a music/MP3 site that contained hundreds of thousands of albums and songs. It was controlled by DrinkOrDie co-Leader John Sankus (a.k.a. "EriFlleh") for the benefit of Drink Or Die members and other select warez scene contributors such as the Defendant.

Defendant also uploaded and downloaded pirated computer games and movies to another FTP site controlled by Drink Or Die, Fatal Error. Fatal Error contained more than 15,000 copies of copyrighted software applications, games, and movies. From March 3, 2001, through October 25, 2001, Fatal Error was connected to the Internet at the facilities of an ISP in Dulles, Virginia. Access to Fatal Error was tightly controlled by Drink Or Die leadership.

To become an authorized user on Fatal Error, an individual either had to be an active and contributing member of Drink Or Die, or, as in defendant's case, a significant member of another warez group capable of supplying Drink Or Die's FTP sites with pirated games, movies, software, or music. To become an authorized user on Fatal Error, Defendant first had to obtain a password and the domain name for the site's "bounce box"³

³A "bounce box," as used here, refers to a computer connected full-time to the Internet that contains security and routing software designed to authenticate users and re-route the user to another computer site with a different IP address. The bounce box provides security for warez FTP sites: a user wishing to access the warez site to download or upload pirated software is only given the domain name or IP address for the site's "bounce box." The bounce box contains security software that authenticates the user and automatically re-routes him or her -- once past the security wall -- to the actual warez FTP site located elsewhere on the Internet. The FTP is assigned a different IP address than the bounce box. The user may never know that he has been re-routed to another IP address, and he may never learn the true IP address and location of the FTP itself.

from a site operator, or “site op,” who generally was one of the group’s leadership. Defendant, in turn, provided the site op with a static IP address, or a narrow range of IP addresses, from which he would access the site. The site op would then insure that the bounce box and associated FTP site was properly configured so that when the Defendant logged on to the applicable ‘bounce’ site, security software verified his screen nickname, password, and originating IP address before re-routing him to the true IP address of the desired FTP site itself.

From May 15, 2001, through October 18, 2001, while Fatal Error was located in the Eastern District of Virginia, Defendant uploaded to the FTP site more than 30 pirated movie and game titles, including the movies Proof Of Life, Along Came a Spider, Swordfish, and Zoolander. Defendant also downloaded a number of pirated PC or console games, including the game titles Tony Hawk Pro Skater 2, Red Faction, and Kohan Immortal Sovereigns.

On December 11, 2001, agents of the U.S. Customs Service executed a search warrant at Defendant’s residence in Orlando, Florida. Agents seized five computers and assorted computer media for forensic examination. Analysis of the seized computer equipment revealed several hard drives filled with hundreds of titles of copyrighted software, PC and console games, movies, and music – all of which had been pirated and released by various warez groups which appended their initials (e.g., “APC,” “FLT,” “DOD”) to each of the titles for which they claimed credit. Various industry associations representing the software, game, and music industries (BSA, IDSA, and RIAA) examined

the list of the pirated works contained on Defendant's computers. These associations identified the copyrighted works owned by their member companies and provided retail values for each. The total retail value of those infringed works exceeded \$40,000 but was less than \$70,000.

Although Defendant did not engage in the commercial sale of pirated software, games, or movies, he did receive "personal financial gain" within the meaning of the criminal copyright statute, see 17 U.S.C. §§101 & 506(a)(1) and the Federal Sentencing Guidelines §2B5.3, Application Note 1, in that he received, and expected to receive, access to other copyrighted works at no cost.

Defendant acknowledges that through his conduct of downloading and uploading computer software, games and movies to and from warez FTP sites, he willfully caused the reproduction or distribution over the Internet of more than 10 copies of copyrighted works within a 180-day period having a total retail value of more than \$2,500. The Defendant and government agree to recommend to the Court that, based on the evidence now known to the government, the infringement amount under the provisions of §2B5.3.(b)(1) of the Federal Sentencing Guidelines attributable to the Defendant is greater than \$40,000, but less than \$70,000.

Respectfully Submitted,

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United States Attorney

By: _____
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Seen and Agreed:

Mark Shumaker
Defendant

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